99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-806

POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978 AMENDMENTS

SEPTEMBER 9, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 4669]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4669) to repeal and amend certain sections of the Powerplant and Industrial Fuel Use Act of 1978, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

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Strike out all after the enacting clause and insert in lieu thereof the following:

SEC. 1. REPEAL OF CERTAIN SECTIONS OF THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978.

(a) IN GENERAL.—The following provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) are repealed:

(1) Title II (42 U.S.C. 8311–8324).
(2) Section 302 (42 U.S.C. 8342).
(3) Section 401 (42 U.S.C. 8371).
(4) Section 402 (42 U.S.C. 8372).
(5) Section 405 (42 U.S.C. 8375).
(6) Title V (42 U.S.C. 8391).
(7) Section 801 (42 U.S.C. 8481).

(b) CLERICAL AMENDMENT.—The table of contents in section 101(b) of the Powerplant and Industrial Fuel Use Act of 1978 is amended by striking the items relating to the provisions repealed by subsection (a) of this section.

(c) CONFORMING AMENDMENTS.—(1) Section 102 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) is amended—

(A) by striking "and major fuel-burning installations" and "and new" wherever they appear, and

(B) in subsection (b), by striking paragraphs (2), (3), and (6) and redesignating paragraphs (4), (5), (7), (8), (9), (10), (11), and (12) as paragraphs (2), (3), (4), (5), (6), (7), (8), and (9), respectively.

(2) Section 103 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8302) is amended—

(A) in subsection (a)(13)(B)—

(i) by striking clause (ii)(III);

(ii) by striking "; or" at the end of clause (ii)(II) and inserting a period; and

(iii) by inserting "and" at the end of clause (ii)(I);

(B) in subsection (a)(15), by striking "or new electric" and all that follows and inserting "electric powerplant.";

(C) in subsection (a)(16), by striking "or installation" each place it appears;

(D) in subsection (a)(19), by striking "or a major fuel-burning installation";

(E) in subsection (a)(20), by striking "or major fuel-burning installation" and "in the case of powerplants,", and by striking "In the case of an electric powerplant, such" and inserting "Such";

(F) in subsection (b), by striking "or major fuel-burning installation" wherever it appears;

(G) in subsection (b)(1)(D), by striking everything after "synthetic gas involved" and inserting a period; and

(H) by striking subsection (b)(3).

(3) Section 104 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8303) is amended to read as follows:

"SEC. 104. TERRITORIAL APPLICATION.

"The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States.".

(4) Section 303 of the Powerplant and Industrial Fuel Use Act of 1978 (12 U.S.C. 8343) is amended—

(A) by striking "or installation" and "or installations" wherever they appear;

(B) in subsection (a)(1) by striking "or 302";

(C) by striking subsection (a)(3);

(D) by amending subsection (b)(1) to read as follows:

"(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants."; and

(E) by amending the last sentence of subsection (b)(3) to read as follows: "Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.".

(5) Subtitle B of title III of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8351–8354) is amended by striking "or installation" each place it appears.

(6) Section 311(a)(3) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8351(a)(3)) is amended by striking "or 302".

(7) Section 312 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8352) is amended—

(A) by striking subsection (d)(2);

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(B) in subsection (d)(3), by striking "In the case of an existing electric powerplant, the" and inserting "The"; and

(C) by striking subsection (j), (k), and (l).

(8) Section 313(a) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8353(a)) is amended by striking "(i), or (j)" and inserting "or (i)".

(9) Section 403 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8373) is amended—

(A) in subsection (a)(1), by striking ", major fuel-burning installation, or other unit" and ", installation, or unit";

(B) in subsection (a)(2), by striking ", installation, or other unit" and ", installation, or unit";

(C) in subsection (a)(2), by striking the last sentence; and

(D) by striking subsection (a)(3) and (c).

(10) Section 404(c) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8374(c)) is amended by striking "new or".

(11) Section 701 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8411) is amended—

(A) in subsection (b), by striking "(other than under section 402)" and "or installation";

(B) by striking subsection (c);

(C) in the title of subsection (d), by striking "AND EXEMPTIONS";

(D) in the first sentence of subsection (d)(1), by striking "or any petition for any order granting an exemption (or permit)" and "(other than under section 402)";

(E) in subsection (d)(1)(B), by striking "or in the consideration of such petition";

(F) in subsection (f), by striking "402 or" the first place it appears, and by striking "or a petition for an exemption (or permit) under this Act (other than under section 402 or 404),"; and

(G) by striking subsection (g).

(12) Section 702 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8412) is amended—

(A) in the title of subsection (a), by striking "OR EXEMPTION";

(B) in subsection (a), by striking "or granting an exemption (or permit)";

(C) by striking subsection (b);

(D) in the first sentence of subsection (c)(1), by striking ", or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b),";

(E) in the first sentence of subsection (c)(1), by striking "such rule, order, or denial is published under subsection (a) or (b)" and inserting "such rule or order is published under subsection (a)";

(F) in the first sentence of subsection (c)(2), by striking "the rule, order, or denial" and inserting "the rule or order";

(G) in the second sentence of subsection (c)(2), by striking "(or denial thereof)"; and

(H) in subsection (c)(3), by striking "any such rule, order, or denial" and inserting "any such rule or order".

(13) Section 711 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8421) is amended by striking in the first sentence of subsection (a), "or major fuel-burning installation".

(14) Section 721 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8431) is amended by striking subsection (c).

(15) Section 722 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8432) is amended by striking "(other than section 402)".

(16) Section 723 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8433) is amended—

(A) in subsection (a), by striking "(other than section 402)"; and

(B) by striking subsections (b) and (c).

(17) Section 731 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8441) is amended—

(A) in subsections (a)(1) and (g)(3), by striking "title II or"; and

(B) in subsection (e)(1), by striking "or major fuel-burning installation" and "or major fuel burning installation".

(18) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8455) is amended by striking in the first sentence of subsection (a), "from new and existing electric powerplants and major fuel-burning installations" and inserting "from existing electric powerplants".

(19) Section 761 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8471) is amended—

(A) in subsection (a), by striking "any existing or new electric powerplant or major fuel-burning installation" and inserting "any existing electric powerplant"; and

(B) in subsection (b), by striking "new or" and "section 212(b) or".

(20) Section 763 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8473) is amended by striking "or major fuel-burning installation" each place it appears, and by striking paragraph (2)(B).

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the first day of the first calendar month beginning more than ten days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 4469, as reported by the Committee on Energy and Commerce, is to repeal the remaining prohibitions under the Powerplant and Industrial Fuel Use Act of 1978 (FUA) on the use of natural gas and petroleum as primary energy sources in electric powerplants and major fuel-burning installations (MFBI's). The bill also repeals discretionary authority granted the Secretary of Energy to prohibit the boiler use of natural gas for space heating, a ban on the use of natural gas for outdoor decorative lighting, restrictions on increased petroleum use by certain existing powerplants which have used coal or another alternative fuel as a primary energy source, optional compliance mechanisms for certain existing electric powerplants, and annual reporting requirements with respect to domestic coal reserves and federal agency compliance under the Act.

By repealing FUA, H.R. 4469 will remove artificial government restrictions on the use of oil and gas; allow energy consumers to make their own fuel choices in an increasingly deregulated energy marketplace; encourage multifuel competition among oil, gas, coal, and other fuels based on their price, availability, and environmental merits; and provide potential new markets for financially distressed domestic oil and gas producers.

BACKGROUND AND NEED FOR THE LEGISLATION

THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

The Powerplant and Industrial Fuel Use Act of 1978 is one of several laws comprising the National Energy Act, which was enacted following severe shortages of natural gas during the winter of 1976–1977 and several years of escalating oil prices after the 1973 oil embargo. At the time, there was a general consensus that the nation would continue to experience short supplies of oil and gas, accompanied by rising prices, for the foreseeable future.

The Act's primary purposes were to preserve oil and gas for certain uses for which alternate fuels could not easily be substituted, to increase use of our extensive domestic coal reserves, and to reduce the nation's dependence on imported oil. In order to achieve these goals, the Act prohibited the use of oil and gas as primary fuels in "new" electric powerplants and "new" MFBI's, a term which includes large industrial boilers, turbines, and engines. ("New" facilities are defined as those built after April 20, 1977).

The Act also required that new powerplants be constructed so as to be capable of using coal, or another alternate fuel, as a primary energy source.

In addition to the restrictions on new facilities, the Act required the conversion of "existing" powerplants to coal or another alternate fuel by 1990 (the so-called "off-gas" provision), and authorized the Secretary of Energy to order the conversion of "existing" MFBI's which were capable of using coal. ("Existing" facilities are defined as those built before April 20, 1977.)

The Act restricted the use of natural gas in outdoor decorative lighting fixtures and in boilers used for space heating, and made federal agency facilities subject to its restrictions. The Act also restricted increased use of petroleum in existing electric powerplants, and authorized the President during a supply emergency to allocate coal to, or prohibit use of gas or oil by, electric powerplants and MFBI's.

AMENDMENTS UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1981

The Omnibus Budget Reconciliation Act of 1981 (OBRA) included several amendments to the Fuel Use Act, the most important of which repealed the so-called "off-gas" prohibition on existing electric powerplants and substituted a voluntary certification procedure in its place.

The off-gas provision had, until this repeal, banned the use of natural gas as a primary energy source in existing electric powerplants after the "trigger date" of January 1, 1990, and had imposed other restrictions on gas use during the period before the trigger date. In addition, the Secretary of Energy was authorized to prohibit the use of petroleum or natural gas in an existing electric powerplant if the plant had the technical capability to use coal or another alternate fuel, or could be converted to coal use.

In 1981, OBRA repealed these prohibitions and substituted a voluntary procedure that enabled converting plants to request "prohibition" orders in order to receive preferential treatment under the Clean Air Act. Before then, powerplants switching to coal as a result of federal conversion orders were exempt from the Clean Air Act's stringent "new source performance standards." Such conversions were treated instead as "modifications" of an existing facility, which were subject only to state implementation plans. In order to preserve this exemption, without which the cost of coal conversion would often prove prohibitive, OBRA substituted a voluntary "prohibition" procedure for FUA's original mandatory provisions.

OBRA also relaxed the Act's restrictions on the use of natural gas for decorative outdoor lighting, repealing the restriction for residential fixtures using gas prior to FUA's enactment in 1978. Finally, OBRA added a new requirement that utilities which own or operate existing electric powerplants using natural gas as a primary energy source must submit plans to the Department of Energy for achieving at least a ten percent reduction in energy use over a five year period through conservation.

IMPACT OF FUEL USE ACT

FUA's impact on utility and industrial sector fuel choices during the eight years since its enactment has been far less significant than was originally expected.

EXISTING FACILITIES

Since the off-gas provisions requiring conversion of existing powerplants to coal or other alternate fuels were repealed by OBRA long before the 1990 trigger date, FUA had no direct impact on such facilities. While the preferential Clean Air Act treatment made available to plants voluntarily switching to coal has helped facilitate such conversions, this treatment was available under FUA prior to the OBRA amendments and has not provided an independent incentive to fuel switching. But there is evidence that the conservation program mandated by OBRA has been successful: According to the Department of Energy (DOE), the program has saved about 1.5 trillion cubic feet of natural gas—almost one-tenth of our nation's current annual consumption.

Similarly, FUA's potential to force conversions of major fuel-burning installations to coal has not materialized, since no Secretary of Energy has used the discretionary authority to order such actions.

NEW FACILITIES

Since FUA's prohibitions regarding new electric powerplants and industrial facilities are still in effect, the Act has had the potential to influence decisions as to whether to build new facilities and what fuels to use. However, any impact FUA has had on new facilities has likely been subsumed by broader trends in energy demand and economic growth which were not anticipated at the time of its passage.

Electric utilities and their customers responded to rising prices and intermittent shortages of oil and natural gas during the 1970's and early 1980's with unanticipated gains in conservation. When FUA was adopted in 1978, electricity demand had been rising at an annual rate of 7 percent, and was expected to grow at between 5 and 6 per cent each year through the mid-1980's. In fact, annual demand growth fell to about 3 per cent between 1978 and 1983. This reduction in the need for new electric capacity, combined with sluggish economic growth and many utilities' desire to reduce reliance on costlier and apparently limited oil and gas supplies, resulted in the construction of few new oil- or gas-fired baseload plants during this period.

By the time oil and gas prices began falling and the supply shortage turned into a glut in 1982, utilities' strategies for adding new capacity focused on smaller generating units with lower up-front capital costs. Thus, while FUA may have contributed to utilities' decisions to build fewer and smaller plants, it seems unlikely to have been a primary determinant of such choices.

EXEMPTIONS

From its enactment, FUA has included several temporary and permanent exemptions from its restrictions on oil and gas use. Since the prohibition on existing electric powerplants has been voluntary since 1981, and no conversion orders for existing MFBI's were issued, the exemptions have not been important with respect to existing facilities.

In the case of FUA's restrictions on the use of oil and gas in new facilities, however, the exemption process has been extensively employed. DOE has administered the exemption rules liberally, processing most within a year. In fact, DOE has never denied a completed petition. The majority of requests have been for electric powerplants, with the majority of exemptions being for peakload use, cogeneration, use of gas in fuel mixtures, or lack of an economical alternative to gas or oil.

Because DOE's data does not specify the size of facilities for which exemptions are requested, it is difficult to tell whether FUA's exemptions have ever been used to circumvent the general prohibitions on oil and gas use by new facilities. However, few baseload electric powerplants or large industrial boilers have been ordered recently. It is possible that this lack of investment in new facilities may be partially attributable to the fact that, if not strictly prohibited by FUA, new facilities that rely primarily on oil or gas must at a minimum contend with the delay and expense of the exemption process. However, in view of the fact that DOE has never denied an exemption petition, it seems likely that the dearth of large new oil- or gas-fired facilities is due to more fundamental economic factors affecting utility planning and industrial growth.

The net result is that these provisions of the Act may be both ineffective and costly: The Congressional Budget Office estimates the annual cost of processing these exemptions exceeds $1 million.

REASONS FOR REPEAL

First, although FUA to date has not had a major effect on the construction of new facilities by utilities and industry, recent changes in oil and natural gas markets could give the Act greater significance. Lower prices for these commodities, combined with a persistent supply glut which may continue throughout the 1980's, have increased the attractiveness of these fuels. In some situations, then, FUA's previously dormant provisions relating to new facilities could begin to restrict private sector choices dictated by changed market conditions.

For example, it is more likely now that a utility or industrial installation might regard oil or gas once again as a reliable energy source for the foreseeable future. While such a choice might be reasonable, it would not necessarily be demonstrably preferable to coal on economic grounds. Thus, there is no guarantee that a FUA exemption on the basis of a lack of an economical alternate fuel would be obtained. Similarly, a utility facing competition for industrial load, or stringent review from a state public utility commission, might forestall adding new capacity until the need for expansion was absolutely clear. Because gas powerplants can often be

built more quickly and cheaply than coal units, FUA's restrictions could deny utilities needed flexibility.

Second, the original Act was of course squarely intended to deny "flexibility" to utilities and industry—the flexibility to use oil or gas. And it was clearly intended to restrict private sector investment decisions, so that investments in oil or gas boilers would be difficult or impossible.

These deliberate restrictions were however premised on the belief that government could accurately predict the nation's energy future, and that this future was one of high prices and supply shortages of oil and gas. But these projections have not been borne out; nor have private sector energy projections dealing with oil and gas prices and supplies, which have often been more inaccurate than government forecasts.

Thus, a more decentralized, diversified strategy seems appropriate, with each consumer investing on the basis of his own needs and forecasts, and the avoidance of a single, centralized (and possibly erroneous) energy forecast that all consumers are compelled to follow.

Third, the decontrol of oil prices in the years following the enactment of FUA, and the phased decontrol of much natural gas production in the last seven years, have in great degree removed the artificially attractive "below market" prices those fuels may have had in the late 1970's, relative to other fuels. Those prices may have resulted in artificial overconsumption of oil and gas—and an artificial overbuilding of oil- and gas-fired boilers that arguably could have justified FUA's restriction. But with the end of those below market prices, direct bans on the use of oil and gas now seem less necessary.

Fourth, in a time of financial distress for many domestic oil and gas producers and low demand for these fuels, it seems unwise to prohibit consumers from buying them. For example, increased consumption of natural gas can spread the fixed costs of the nation's transmission network over more sales and thus lower per-unit costs to each user; it can provide new cash flow to hard-hit producers, which can in turn improve the health of our nation's vital energy industry; and it can help lower dependence on foreign oil imports, which has begun to rise with the sharp recent fall in oil prices.

Fifth, repeal of FUA will remove the costly administrative expenses now associated with obtaining exemptions, which have added unnecessary costs to the construction of new powerplants even though they have almost always been granted. Indeed, the routine and increasing use of administratively-granted exemptions from FUA indicates that it now performs only a minimal role.

H.R. 4669 nonetheless acknowledges there may be unforeseeable changes in future energy markets. In order to maintain an ability to respond to such changes, H.R. 4669 retains certain fuel consumption reporting requirements and Presidential authorities to allocate coal and restrict oil and gas use during a severe supply interruption.

HEARINGS

The Committee's Subcommittee on Fossil and Synthetic Fuels held three days of hearings on the full spectrum of natural gas regulation issues, including repeal of FUA, on June 4, 12, and 19, 1986. Testimony was received from twenty witnesses representing twenty organizations, with additional material submitted by numerous individuals and organizations.

The Subcommittee on Energy Conservation and Power held a hearing on H.R. 4669 on June 18, 1986. Testimony was received from six witnesses representing six organizations, and three additional submissions were later accepted for the record.

COMMITTEE CONSIDERATION

On April 29, 1986, the Subcommittee on Fossil and Synthetic Fuels met in open session and ordered reported the bill H.R. 4669, by a voice vote, a quorum being present. On June 18, 1986, the Subcommittee on Energy Conservation and Power met in open session and reported the bill H.R. 4669, with one amendment, by a voice vote, a quorum being present. On August 12, 1986, the Committee met in open session and ordered reported the bill H.R. 4669, as amended, by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will save approximately $1 to $2 million annually, by reducing administrative expenses at DOE now incurred in processing a large number of requests for exemptions from FUA restrictions.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 2, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4669, a bill to repeal and amend certain sections of the Powerplant and Industrial Fuel Use Act of 1978, as ordered reported by the House Committee on Energy and Commerce, August 12, 1986.

The bill repeals several sections of the act that restrict the use of natural gas and petroleum by electric power plants and major industrial fuel-burning installations.

Under current law, industrial installations and electric power plants request exemption from the Fuel Use Act to use oil and gas. Because of the recent decline in the price of oil, the Department of Energy (DOE) has experienced a large increase in the number of exemption requests. Repeal of the fuel use restrictions on major industrial fuel-burning installations and new electric power plants is expected to reduce administrative expenses at DOE by approximately $1 million to $2 million per year, largely because processing these exemption requests would no longer be necessary.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: By allowing energy consumers to make capital investments in large boilers on the basis of the most cost effective and efficient fuel choice, H.R. 4669 should lower energy costs in future years and thereby lower inflation.

SECTION-BY-SECTION ANALYSIS

SECTION-BY-SECTION ANALYSIS OF H.R. 4669

Section 1 repeals the remaining mandatory prohibitions on the use of petroleum and natural gas under the Powerplant and Industrial Fuel Act of 1978 (the Act), and makes conforming amendments.

Subsection (a) of section (1) repeals the restrictions on the use of natural gas and petroleum in new electric powerplants and related exemptions in Title II of the Act; the authority granted to the Secretary of Energy to prohibit the use of natural gas or petroleum in existing major fuel-burning installations in Section 302 of the Act; the Secretary of Energy's authority to prohibit the use of natural gas in certain boilers used for space heating in Section 401 of the Act; the ban on the use of natural gas for outdoor decorative lighting in Section 402 of the Act; restrictions on increased petroleum use of certain existing electric powerplants that have used coal or another alternate fuel as a primary energy source in Section 405 of the Act; optional compliance mechanisms for certain existing electric powerplants owned by electric utilities in Title V of the Act; and annual reporting requirements with respect to domestic coal reserves under Section 801 of the Act.

Subsection (b) is a clerical amendment to the table of contents of the Act striking references to provisions repealed by the bill.

Subsection (c) makes a number of conforming amendments and some substantive amendments to the Act:

Paragraph (c)(1) amends the findings and statement of purposes in section 102 of the Act.

Paragraph (c)(2) makes conforming amendments to certain definitions in section 103 of the Act.

Paragraph (c)(3) makes conforming amendments to the provisions in section 104 of the Act designating the territorial application of the Act, and extends the provisions of section 301 of the Act from the contiguous 48 States and the District of Columbia to Alaska, Hawaii, Puerto Rico, and the territories and possessions of the United States as well.

Paragraph (c)(4) makes conforming amendments to the rules in Section 303 of the Act relating to case-by-case and category prohibitions for existing facilities.

Paragraphs (c) (5) through (8) make conforming amendments to the provisions relating to exemptions for existing facilities in sections 311 through 313 of the Act.

Paragraph (c)(9) makes conforming amendments to the provisions relating to conservation in federal facilities, contracts, and financial assistance programs in Subsections 403(a) (1) and (2) of the Act; repeals Subsection 403(a)(3) of the Act relating to exemptions for federal facilities; and repeals the requirement in Subsection 403(c) of the Act for an annual Presidential report to Congress on implementation of the Act.

Paragraph (c)(10) makes conforming amendments to the Presidential emergency authorities under section 404 of the Act.

Paragraph (c)(11) makes conforming amendments to the provisions relating to administrative procedures in section 701 of the Act.

Paragraph (c)(12) makes conforming amendments to the provisions relating to judicial review in section 702 of the Act.

Paragraph (c)(13) makes conforming amendments to the provisions relating to the Secretary of Energy's authority to require submission of certain information relating to major fuel-burning installations in section 711 of the Act.

Paragraphs (c) (14) through (16) make conforming amendments to the enforcement provisions in sections 721 through 723 of the Act.

Paragraph (c)(17) makes conforming amendments to the provisions relating to the preservation of contractual interests in section 731 of the Act.

Paragraph (c)(18) makes conforming amendments to the provisions relating to monitoring of emissions by the Administrator of the Environmental Protection Agency in section 745 of the Act.

Paragraph (c)(19) makes conforming amendments to the provisions relating to the Act's effect on environmental requirements in section 761 of the Act.

Paragraph (c)(20) makes conforming amendments to the provisions relating to environmental impact statements in section 763 of the Act.

Section 2 provides that H.R. 4669 shall take effect on the first day of the first calendar month beginning more than ten days after the date of its enactment.

Agency Views

In testimony before the Fossil and Synthetic Fuels Subcommittee on June 4, 1986, Secretary of Energy Herrington stated that "Demand restraints as embodied in the Fuel Use Act . . . add to the cost of using gas and prevent gas from competing effectively with other fuels. This encourages inefficient, higher cost fuel choices and discourages the full use of our domestic gas resources. We have tried to minimize the inefficiencies created by the FUA through a streamline process of granting exemptions to the Act's prohibitions. Indeed, the number of requests for exemptions is substantial—104 exemptions were granted last year; even more will be granted this year. These numbers are clear evidence of the potential burdens on natural gas users created by the FUA."

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Powerplant and Industrial Fuel Use Act of 1978

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Powerplant and Industrial Fuel Use Act of 1978".

(b) Table of Contents.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title; table of contents.
Sec. 102. Findings; statement of purposes.
Sec. 103. Definitions.
Sec. 104. Territorial application.

[TITLE II—NEW FACILITIES

[Subtitle A—Prohibitions

[Sec. 201. New electric powerplants.
[Sec. 202. New major fuel-burning installations.]

Subtitle B—Exemptions

Sec. 211. Temporary exemptions..
Sec. 212. Permanent exemptions.
Sec. 213. General requirements for exemptions.
Sec. 214. Terms and conditions; conpliance plans.

TITLE III—EXISTING FACILITIES

Subtitle A—Prohibitions

Sec. 301. Exiting electric powerplants.

[Sec. 302. Existing major fuel-burning installations.]
Sec. 303. Rules relating to case-by-case and category prohibitions.

SUBTITLE B—EXEMPTIONS

Sec. 311. Temporary exemptions.
Sec. 312. Permanent exemptions.
Sec. 313. Genral requirements for exemptions.
Sec. 314. Terms and conditions; compliance plans.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

[Sec. 401. Authority to prohibit use of natural gas in certain boilers used for space heating.
[Sec. 402. Prohibition on use of natural gas for decorative outdoor lighting.]
Sec. 403. Conservation in Federal facilities, contracts, and financial assistance programs.
Sec. 404. Emergency authorities.
[Sec. 405. Authority to restrict increased use of petroleum by existing powerplants.

[TITLE V—SYSTEM COMPLIANCE OPTION

[Sec. 501. Electric utility system compliance option.]

SEC. 102. FINDINGS; STATEMENT OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing [and new] electric powerplants [and major fuel-burning installations;] and

(2) the purposes of this Act are furthered in cases in which coal or other alternate fuels are used by electric powerplants [and major fuel-burning installations,] consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) STATEMENT OF PURPOSES.—The purpose of this Act, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

[(2) to conserve natural gas and petroleum for uses, other than electric utiliy or other industrial or commerical generation of steam or electricity for which there are no feadible alternative fuels or raw material substitutes;

[(3) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum as a primary energy source;]

[(4)]*(2)* to the extent permitted by this Act, to encourage the use of synthetic gas derived from coal or other alternate fuels;

[(5)]*(3)* to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

[(6) to prohibit or, as appropriate, minimize the use of natural gas and petroleum as a primary energy source and to con-

serve such gas and petroleum for the benefit of present and future generations;]

[(7)]*(4)* to encourage the modernization or replacement of existing [and new] electric powerplants and [major fuel-burning installations] which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

[(8)]*(5)* to require that existing and new electric powerplants [and major fuel-burning installations] which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this Act comply with applicable environmental requirements;

[(9)]*(6)* to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this Act by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

[(10)]*(7)* to insure that adequate supplies of natural gas are available for essential agricultureal uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

[(11)]*(8)* to reduce the vulnerability of the United States to energy supply interruptions; and

[(12)]*(9)* to regulate interstate commerce.

SEC. 103. DEFINITIONS.

(a) Unless otherwise expressly provided, for purposes of this Act—

(1) * * *

* * * * * * * *

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) * * *

* * * * * * * *

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comly with the applicable requirements of this Act—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; *and*

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority) [; or].

[(III) in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).]

* * * * * * *

(15) The term "primary energy source" means the fuel or fuels used by any existing [or new electric powerplant or major fuel-burning installation, except it does not include, as determined under rules prescribed by the Secretary—

[(A) the minimum amount of fuel required for unit ignition, startup, testing, flame stablization, and control uses, and

[(B) the mimimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.] *electric powerplant.*

(16) The term "site limitation" means, when used with respect to any powerplant [or installation], any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant [or instaliation], such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant [or installation], including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

* * * * * * *

(19) The term "congeneration facility" means an electric powerplant [or major fuel-burning installation] which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant [or major fuel-burning installation,] discounted to present value, as determined by the Secretary ([in the case of powerplants,] in consultation with the State regulatory authorities). [In the case of an electric powerplant, such] *Such* costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the

production, transmission, and distribution or electric power within such system.

* * * * * * *

(b) SPECIAL RULES RELATING TO DEFINITIONS OF NATURAL GAS AND ALTERNATE FUEL.—(1) Subject to paragraph (2), natural gas which is to be used by a powerplant [or major fuel-burning installation] shall, for purposes of this Act (other than this subsection), be excluded for the definition of "natural gas" under subsection (a)(3)(B)(iii) and shall be included within the definition of "alternate fuel" under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents, as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic has is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, or local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved [, except that for purposes of the prohibition under section 201(2) against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented].

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant [or major-fuel burning installation] shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

[(3) In the case of any boiler subject to a prohibition under section 401, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.]

(4) For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

[SEC. 104. TERRITORIAL APPLICATION.

[The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

[(1) the provisions of titles II and III (other than section 301) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

[(2) the provisions of section 301 shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.]

SEC. 104. TERRITORIAL APPLICATION.

The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States.

[TITLE II—NEW FACILITIES

[Subtitle A—Prohibitions

[SEC. 201. NEW ELECTRIC POWERPLANTS.

Except to such extent as may be authorized under subtitle B—

[(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

[(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.

[SEC. 202. NEW MAJOR FUEL-BURNING INSTALLATIONS.

[(a) GENERAL PROHIBITION.—Except to such extent as may be authorized under subtitle B, natural gas or petroleum shall not be used as a primary energy source in a new major fuel-burning installation consisting of a boiler.

[(b) AUTHORITY OF SECRETARY TO PROHIBIT NONBOILERS FROM USING NATURAL GAS OR PETROLEUM.—(1) The Secretary may, by rule, prescribe categories (identified in such rules) of new major fuel-burning installations, other than boilers, in which natural gas or petroleum, or both shall be prohibited from being used as a primary energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Secretary shall take into account any special circumstances or characteristics of each category of such installations (such as the technical feasibility of burning coal or other alternate fuels and the size or geographic location of such installations). The application of any such final rule in the case of any new major fuel-burning installation subject to such rule shall be stayed pending a resolution (including judicial review) of any petition for an exemption for such installation which is filed with the Secretary not later than 60 days after such final rule is published under section 702(a). Any such final rule shall not apply in the case of any installation with respect to which a comparable prohibition was issued by order (or was pro-

posed but was not issued because it was demonstrated that it could qualify for an exemption under subtitle B).

[(2)(A) The Secretary may, by order, prohibit the use of natural gas or petroleum, or both, as a primary energy source in any new major fuel-burning installation, other than a boiler, if such installation is not, at the time of the issuance of the proposed order, in a category identified in a final rule issued under paragraph (1).

[(B) Subject to subparagraph (C), the Secretary shall not issue a final order under this paragraph with respect to any installation if it is demonstrated that there would have been granted an exemption for such installation if such prohibition had been established by rule pursuant to paragraph (1) rather than by order pursuant to this paragraph, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as such temporary exemption would have terminated.

[(C) In any case in which an order is not issued by reason of subparagraph (B) or in which the effective date of such order is delayed under subparagraph (B), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 214(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

[(3) A prohibition under this subsection shall only apply with respect to an installation for which construction or acquisition began on or after the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition. Any installation not subject to such a prohibition because of the preceding sentence shall be considered an existing major fuel-burning installation for purposes of title III.

[Subtitle B—Exemptions

[SEC. 211. TEMPORARY EXEMPTIONS.

[(a) GENERAL EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

> [(1) it is likely that an adequate and reliable supply of coal or other atlernate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

[(2) one or more site limitations exist which would not permit the location or operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

[(3) the prohibitions of section 201 or 202 could not be satisfied without violating applicable environmental requirements.

[(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

[(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

[(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 214(b).

[(c) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this Act.

[(d) TEMPORARY EXEMPTION FOR THE USE OF PETROLEUM BY CERTAIN INSTALLATIONS.—After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 202 for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitions for an exemption under this subsection, see section 902(b).

[(e) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraph (2), exemptions under this section for any powerplant of installation may not exceed, taking into account any extension or renewal, 5 years.

[(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

[(B) An exemption under subsection (b) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

[(3) If an exemption is granted for any powerplant or installation before the powerplant or installation is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

[SEC. 212. PERMANENT EXEMPTIONS.

[(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, ENVIRONMENTAL REQUIREMENTS, OR ADEQUATE CAPITAL.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

[(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant or installation, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the useful life of the powerplant or installation involved;

[(B) one or more site limitations exist which would not permit the location or operation of such powerplant or installation using coal or any other alternate fuel as a primary energy source;

[(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements; or

[(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant or installation.

[(2) The demonstration required to be made by a petitioner under paragraph (1) shall—

[(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

[(B) in the case of a new electric powerplant, be made with respect to the site of such powerplant and reasonable alternative sites.

[(3) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) may not be granted an exemption under this subsection.

[(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with re-

spect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

[(1) with respect to the proposed site of the powerplant or installation, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

[(2) in the case of a powerplant, there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1) (A) through (D); and

[(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

[(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

[(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both are used in such facility, and

[(2) includes in the final order a statement of the basis for such finding.

[(d) PERMANENT EXEMPTION FOR CERTAIN MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

[(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

[(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability of operation of such powerplant or installation consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

[(2) In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

[(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

[(f) PERMANENT EXEMPTION FOR POWERPLANTS NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—After consideration of a petition (and comments thereon) for an exemption for a powerplant

from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

[(1) such exemption is necessary to prevent impairment of reliability of service, and

[(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) in the time required to prevent such impairment of service.

[(g) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant—

[(1) in the case of a proposed use of petroleum, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to petroleum if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant; and

[(2) in the case of a proposed use of natural gas, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas if—

[(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded; and

[(B) the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

[(h) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may grant a permanent exemption under this subsection for such use, by order, if he finds that the petitioner has demonstrated that—

[(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded;

[(B) such powerplant is to be construed and operated only to replace no more than the equivalent capacity of existing electric powerplants—

[(i) which use natural gas or petroleum as a primary source,

[(ii) which are owned by the same person who is to operate such powerplant, and

[(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such area;

[(C) such powerplant is to be operated solely as an intermediate load powerplant;

[(D) the net heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

[(E) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1) (A) through (D); and

[(F) the powerplant is to be constructed with the capability to use a synthetic fuel derived from coal or other alternative fuel.

[(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption when he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

[(i) PERMANENT EXEMPTIONS FOR INSTALLATIONS BASED UPON PRODUCT OR PROCESS REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

[(1) the use of coal or another alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

[(2) substitution of steam is not technically feasible due to process requirements.

[(j) PERMANENT EXEMPTION FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

[SEC. 213. GENERAL REQUIREMENTS FOR EXEMPTIONS.

[(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 212 (d) or (g), the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

[(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 212(d) would be available, is not economically or technically feasible; and

[(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

[(b) STATE APPROVAL REQUIRED FOR POWERPLANT.—If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

[(1) to the extent it applies to the prohibition under section 201(2) against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

[(2) to the extent it applies to the prohibition under section 201(1) against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.

[(c) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) Except in the case of an exemption under section 212 (c) or (g), the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

[(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

[SEC. 214. TERMS AND CONDITIONS; COMPLIANCE PLANS.

[(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

[(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

[(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or such compliance; and

[(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.]

TITLE III—EXISTING FACILITIES

Subtitle A—Prohibitions

* * * * * * *

[SEC. 302. EXISTING MAJOR FUEL-BURNING INSTALLATIONS.

[(a) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303 (a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing major fuel-burning installation, if the Secretary finds that—

[(1) such installation has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

[(2) such installation has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

[(A) substantial physical modification of the unit, or

[(B) substantial reduction in the rated capacity of the unit; and

[(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such installation.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b) and is published with such notice

[(b) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—

[(1) In the case of any existing major fuel-burning installation in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such installation in amounts in excess of the minimum percentage of the total Btu heat input of the primary energy sources needed to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

[(2) The percentage determined by the Secretary under paragraph (1) shall not be less than 25 percent.]

SEC. 303. RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS.

(a) CASE-BY-CASE PROHIBITIONS.—(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant [or installation] from using natural gas or petroleum under the authority granted him under section 301 (b) or (c) [or 302] only by means of a final order issued by him which shall be limited to the particular powerplant [or installation] involved.

(2) The Secretary may issue such a final order only with respect to a powerplant [or installation] which is not, at the time the proposed order is issued, covered by a final rule issued under section (b).

[(3)(A) Subject to paragraph (B), the Secretary shall not issue a final order under this subsection to any powerplant or installation if it is demonstrated that such powerplant or installation would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) rather than by order pursuant to this subsection, except that if a temporary ex-

emption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

[(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 314(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.]

(b) PROHIBITIONS APPLICABLE TO CATEGORIES OF FACILITIES.—[(1) The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 301(b) or 302(a)—]

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants.

(A) in the case of any category of existing electric powerplants identified in such rule; and

(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.

(2) Each powerplant [or installation] to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants [or installations] (such as the intermittent use, size, age, or geographic location of such powerplants [or installations]). [Any such rules shall not apply in the case of any existing electric powerplant or major fuel-burning installation—

[(A) pending a resolution (including judicial review) of any petition for any exemption for such powerplant or installation which may be filed with the Secretary not later than 60 days after such final rule is published under section 702(a); or

[(B) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued by reason of subsection (a)(3)).] *Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.*

Subtitle B—Exemptions

SEC. 311. TEMPORARY EXEMPTIONS.

(a) TEMPORARY EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petition has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant [or installation] at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant [or installation] using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 301 [or 302] could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(c) TEMPORARY EXEMPTION BASED UPON USE OF INNOVATIVE TECHNOLOGIES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant [or installation] will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(d) TEMPORARY EXEMPTION FOR UNITS TO BE RETIRED.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant [or installation] is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintain-

ing a compliance plan meeting the requirements of section 314(b) (other then paragraph (1)(B)).

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle may not be granted for any powerplant [or installation] once an exemption under this subsection has been granted for such powerplant [or installation].

(e) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant [or installation] from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this Act.

(f) TEMPORARY EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) TEMPORARY EXEMPTION FOR POWERPLANTS WHERE NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle (other than a permanent exemption under section 312(f) for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant [or installation] may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

SEC. 312. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant [or installation] at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant [or installation;]

(B) one or more site limitations exist which would not permit the operation of such a powerplant [or installation] using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under this subsection (g) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation], the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant [or installation], the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this subtitle could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) PERMANENT EXEMPTION FOR CERTAIN FUEL MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—(1) After consideration of a

petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation] the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant [or installation] uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability or operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

[(2) In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.]

(3) [In the case of an existing electric powerplant, the] The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant [or installation] the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant [or installation] will be maintained and operated only for emergency purposes (as defined by rule by the Secretary.)

(f) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in a impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is techically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency)

certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) PERMANENT EXEMPTION FOR USE OF NATURAL GAS BY CERTAIN POWERPLANTS WITH CAPACITIES OF LESS THAN 250 MILLION BTU'S PER HOUR.—(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of subtitle A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petition has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 301 and prohibitions established by final rules or orders issued before January 1, 1990.

(i) PERMANENT EXEMPTION FOR THE USE OF LNG BY CERTAIN POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied

natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

[(j) PERMANENT EXEMPTION FOR INSTALLATIONS SERVED BY CERTAIN INTERNATIONAL PIPELINES.—(1) After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas, if he finds that the petitioner has demonstrated that—

[(A) such installation's primary source of natural gas is under a contract with a pipeline between Canada and the United States which cannot be cancelled by the petitioner without his suffering substantial financial penalty;

[(B) such pipeline was supplying to such installation before April 21, 1977, natural gas from Canada under such contract;

[(C) such pipeline serves high-priority users within the United States service to whom would be jeopardized if service to such installation is terminated;

[(D) the revenues from the transportation and sale of natural gas transported by such pipeline are essential to the economic vitality of the pipeline; and

[(E) the exemption is consistent with the purposes of this Act, and the denial of such exemption would not result in natural gas being made available for any other use within the United States.

[(2) For purposes of this subsection, the term "high-priority user" means any residential user of natural gas, or any commercial user whose consumption of natural gas on a peak day is less than 50 Mcf, as determined by the Secretary.

[(k) PERMANENT EXEMPTION FOR INSTALLATION BASED UPON PRODUCT OR PROCESS REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds the petitioner has demonstrated that—

[(1) the use of coal or other alternate fuels is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

[(2) substitution of steam is not technically feasible due to process requirements.

[(l) PERMANENT EXEMPTION FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such

exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).]

SEC. 313. GENERAL REQUIREMENTS FOR EXEMPTIONS.

(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 312 (b), (f), [(i), or (j),] *or (i)* the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 312(b) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) In the case of an exemption under section 312 (b) or (g), the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall foward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

SEC. 314. TERMS AND CONDITIONS; COMPLIANCE PLANS.

(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant [or installation] covered by such exemption will comply with the applicable prohibitions.

(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

[SEC. 401. AUTHORITY TO PROHIBIT USE OF NATURAL GAS IN CERTAIN BOILERS USED FOR SPACE HEATING.

[(a) EXISTING BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any existing boiler (other than a major fuel-burning installation) if he finds that—

[(1) such boiler is used to produce steam for space heating purposes;

[(2) such boiler consumes 300 Mcf or more of natural gas per day on a peak day;

[(3) such boiler has, or previously had, the technical capability to use petroleum as a primary energy source;

[(4) such boiler has the technical capability to use petroleum as a primary energy source or it could have such capability without—

[(A) substantial physical modification of the boiler, or

[(B) substantial reduction in the rated capacity of the unit;

[(5) it is financially feasible for such boiler to use petroleum as a primary energy source; and

[(6) such prohibition is consistent with the purposes of this Act.

The requirement of paragraph (3) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b).

[(b) NEW BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any new boiler (other than a major fuel-burning installation) if he determines that—

[(1) such boiler will be used to produce steam for space heating purposes;

[(2) such boiler will, by design, be capable of consuming 300 Mcf or more of natural gas per day; and

[(3) such prohibition is consistent with the purposes of this Act.

[(c) EXEMPTION.—The Secretary shall exempt any person from any prohibition prescribed pursuant to subsection (a) or (b) if such person demonstrates to the Secretary that an adequate and reliable source of petroleum is not likely to be available to such person during the period of the exemption.

[(d) DEFINITIONS.—

[(1) The term "new boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition.

[(2) The term "existing boiler" means any boiler other than a new boiler.

[(e) METHOD OF PROHIBITION.—(1)(A) Except to the extent authorized by paragraph (2), the Secretary shall prohibit boiler fuel use of natural gas under the authority granted him in subsection (a) or (b)

only by means of a final order issued by him which shall be limited to the particular boiler involved.

[(B) The Secretary may issue such an order only with respect to a boiler which is not, at the time the proposed order is issued, covered by a final rule issued under paragraph (2).

[(C) The Secretary shall not issue a final order under this subsection with respect to any boiler if it is demonstrated that an exemption under subsection (c) would have been granted with respect to such boiler if such prohibition had been established by rule pursuant to paragraph (2) rather than by order.

[(2)(A) The Secretary may, by rule, prohibit the use of natural gas under the authority of subsection (a) or (b) in the case of any category of boilers identified in such rule.

[(B) Any exisiting boiler to be covered by any rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

[(C) In prescribing any rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of boilers (such as the technical feasibility of burning petroleum and the size, age, or geographic location of such boilers). Any such final rule shall not apply in the case of any boiler—

[(i) subject to such rule pending a resolution of any petition (including judicial review) for any exemption for such boiler which may be filed with the Secretary not later than 60 days after such rule is published under section 701(b); or

[(ii) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subsection (c)).

[SEC. 402. PROHIBITION ON USE OF NATURAL GAS FOR DECORATIVE OUTDOOR LIGHTING.

[(a) PROHIBITION ON INSTALLATION OF NEW OUTDOOR LIGHTING.—Effective beginning on the date of the enactment of this Act, no local distribution company, or any industrial user of natural gas who obtains such gas under a contract between such user and a natural gas pipeline, or any agent thereof, shall install any outdoor lighting fixture using natural gas.

[(b) PROHIBITION ON SELLING NATURAL GAS TO BE USED IN OUTDOOR LIGHTING.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary shall, by rule, prohibit any local distribution company (unless an exemption has been obtained under subsection (c)) from providing natural gas service for use in outdoor lighting (other than any outdoor lighting fixture which was installed before the date of the enactment of this Act for use in connection with a residence and for which natural gas was being provided on such date of enactment)—

[(A) effective on the date such final rule is issued, in the case of any residential, commercial, or industrial customer unless a later effective date is applicable under subparagraph (B) or (C) of this paragraph;

[(B) effective beginning 180 days after the date such final rule is issued, in the case of any industrial or commercial structure for which natural gas was being provided by such

company for outdoor lighting use on the date of the enactment of this Act; and

[(C) effective beginning January 1, 1982, in the case of any municipal outdoor lighting fixture, for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act.

[(2) The rule prescribed under paragraph (1) shall provide that any industrial user of natural gas who obtains such natural gas under a contract between such user and a natural gas pipeline shall be prohibited from using such natural gas for outdoor lighting (unless an exemption has been obtained under subsection (c))—

[(A) effective 180 days after the date such final rule takes effect, if the industrial user was using natural gas for outdoor lighting on the date of the enactment of this Act; or

[(B) beginning on the date such final rule takes effect, if such industrial user was not so using natural gas on such date.

(c) EXEMPTIONS.—(1) The Secretary shall, by order—

[(A) exempt from the probibition under subsection (a) the installation of a replacement lighting fixture for any memorial light or light of historical significance, and

[(B) permanently exempt from a prohibition under subsection (b) the use of natural gas in any memorial light or light of historical significance.

If a petition for such exemption is made by a Federal, State, or local government agency or by any appropriate historical association.

[(2) The Secretary shall, by order—

[(A) exempt from the prohibition under subsection (a), upon a petition therefor, the installation of a replacement lighting fixture for any natural gas outdoor lighting, and

[(B) permanently exempt from a prohibition under subsection (b), upon a petition therefor, use of natural gas for outdoor lighting,

which is used for commercial purposes, which is of a traditional nature, and which conforms with the cultural or architectural style of the area in which such light is located.

[(3) The Secretary shall, by order, exempt and local distribution company or industrial user described in subsection (b)(2), from the rule required to be prescribed under subsection (b) concerning the continuation of such service in effect on the date of the enactment of this Act upon the filing of a petition therefor by such pipeline or company, or by any other interested person. Such exemption shall be for such period as, and to the extent that, the Secretary finds—

[(A) such exemption is necessary to protect the safety of persons or property;

[(B) such exemption is necessary to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists on the date of the enactment of this Act;

[(C) compliance with such rule would entail substantial expense and would not be cost justified; or

[(D) the issuance of the exemption is in the public interest and is consistent with the purposes of this Act.

[(4) Determinations on any petition for an exemption under this section shall be made under criteria which the Secretary shall establish by rule, which rule shall be prescribed not later than 180 days after the effective date of this Act.

[(d) PROCEDURES.—Rules and orders under this section shall be made in accordance with the provisions of section 553 of title 5, United States Code, except that determinations on any petition for exemption under this section shall be made only after interested persons have been afforded an opportunity for a public hearing. Under rules prescribed by the Secretary, the Secretary may stay the application of any prohibition under subsection (b) applicable to any person pending the resolution of any petition for an exemption for such person.

[(e) AUTHORITY MAY BE DELEGATED TO STATES.—(1) Under regulations prescribed by the Secretary, the responsibility and authority of the Secretary with regard to outdoor lighting under this section may be delegated to the appropriate regulatory authority of a State if he determines that such delegation would be consistent with the purposes of this section.

[(2) Any delegation under paragraph (1) shall be on terms and conditions prescribed by the Secretary and may be rescinded by the Secretary at any time by notifying the State authority of such rescission.

[(3) Any State authority to which the Secretary has delegated authority under this subsection shall prepare and transmit reports to the Secretary on a periodic basis (as determined by the Secretary) on actions taken to carry out the purposes of this section.

[(f)(1) For the purposes of discouraging the use of natural gas for outdoor lighting, each local distribution company which is subject to subsection (a) or (b) shall, in accordance with rules promulgated by the Secretary—

[(A) establish a reasonable and simple method, as determined by each such company, by which the company shall periodically inform its customers about the amount of natural gas consumed by outdoor lighting and the annual cost of such gas for such lighting; and

[(B) report to the Secretary the method established under subparagraph (A).

A company may establish a method which provides for reporting such information on the basis of estimates where actual information is not readily available.

[(2) The Secretary shall propose the rules referred to in paragraph (1) as promptly as possible after the date of the enactment of this subsection, and such rules shall take effect not later than the ninetieth day after they are proposed. In promulgating such rules, the Secretary shall, to the greatest extent feasible, consult with the appropriate regulatory authority of the States and the local distribution companies who will be subject to the rules.

[(g) DEFINITIONS.—As used in this section—

[(1) The term "outdoor lighting" means lighting by any stationary source which is not located inside any building.

[(2) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

[(3) The term "local distribution company" means any person engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

[(4) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.]

SEC. 403. CONSERVATION IN FEDERAL FACILITIES, CONTRACTS, AND FINANCIAL ASSISTANCE PROGRAMS.

(a) FEDERAL FACILITIES.—(1) Each Federal agency owning or operating any electric powerplant[, major fuel-burning installation or other unit] shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this Act, to the same extent as would be the case if such powerplant[, installation, or unit] were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant[, installation, or other unit] owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant[, installation, or unit] involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review. [Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.]

[(3) Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a non-governmental person.]

* * * * * * *

[(c) ANNUAL REPORT.—The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.]

SEC. 404. EMERGENCY AUTHORITIES.

(a) * * *

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(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provision of this Act, or any rule or order thereunder, applicable to any [new or] existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

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[SEC. 405. AUTHORITY TO RESTRICT INCREASED USES OF PETROLEUM BY EXISTING POWERPLANTS.

[The Secretary shall, by rule, require that, in the case of any existing electric powerplant which during calendar year 1977 uses coal or another alternate fuel as a primary energy source, petroleum may not be used in such powerplant as a primary energy source in excess of the quantities of petroleum used in such powerplant as a primary energy source during such year unless a permit is issued by the Secretary authorizing such increased use of petroleum. Such permit shall be issued if—

[(1) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary (A) that the powerplant cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in section 110(d) of the Clean Air Act, without the issuance of such permit and (B) the petitioner has established the duration of the need for increased petroleum to comply with such plan; and

[(2) the appropriate State regulatory authority has certified to the Secretary that the increased use of petroleum by such powerplant is necessary to prevent impairment of reliability of service.

Such permit shall be issued only for such period as the Secretary determines necessary under paragraph (1) or (2) for such increased use of petroleum.]

[TITLE V—SYSTEM COMPLIANCE OPTION

[SEC. 501. ELECTRIC UTILITY SYSTEM COMPLIANCE OPTION.

[(a) GENERAL RULE.—Existing electric powerplants owned or operated by an electric utility shall be considered in compliance with any prohibition under title III relating to the use of natural gas if there is in effect a plan of system compliance for such utility approved by the Secretary under subsection (b). No exemption under title III relating to the use of natural gas shall be available for any powerplant which is, or has ever been, covered by such an approved plan (other than an exemption under section 312(e)).

[(b) REQUIREMENTS FOR PLAN APPROVAL.—The Secretary shall, by order, approve any plan of system compliance submitted by an

electric utility to the Secretary before January 1, 1980, if the Secretary finds that such plan—

[(1) identifies all powerplants owned or operated by such electric utility and indicates which of the powerplants—

[(A) would be subject to, or could be subject to, prohibitions under title III relating to the use of natural gas if such plan were not approved; and

[(B) of those so indicated in subparagraph (A), would be, or in the opinion of such electric utility would be likely to be, entitled to an exemption under title III relating to the use of natural gas if such plan were not approved;

[(2) contains a commitment that, if such plan is approved, no new electric powerplant which is or is to be a base load powerplants owned or operated by such utility shall use natural gas or petroleum as its primary energy source (whether or not such powerplant could qualify for an exemption under title II for such use);

[(3) contains a commitment (including a schedule for an orderly progression in satisfying such commitment) that, if such plan is approved, all existing electric powerplants owned or operated by such utility—

[(A) subject to subparagraph (B), on and after January 1, 1995, would not use natural gas as a primary energy source, except in the case of an intermediate load powerplant or a peakload powerplant, and then only in accordance with rules prescribed by the Secretary; and

[(B) on and after January 1, 2000, would not use natural gas as a primary energy source except in the case of a temporary extension obtained under subsection (d);

[(4) contains a commitment that, if such plan is approved, natural gas will not, on and after January 1, 1990, be used by powerplants owned or operated by such utility in excess of—

[(A) 20 percent (or such higher percentage as may be allowed under subsection (d)(2)) of the electric utility's base period usage of natural gas, or, if lower.

[(B) the electric utility's minimum peakload requirement for the calendar year;

[(5) contains a commitment that, if such plan is approved, the natural gas used by such utility will be obtained only under—

[(A) a contract entered into before the date of the enactment of this Act (other than under an extension or renewal of such contract occurring on or after such date); or

[(B) a contract entered into on or after such date, or an extension or renewal occurring on or after such date of a contract entered into before such date, but only if such contract, extension, or renewal has been approved by the Secretary under subsection (g); and

[(6) contains a 10-year forecast of such utility's demand for electricity, a 10-year construction forecast, and a 10-year financial plan, which provide a reasonable basis for concluding that the commitments in such plan will be carried out.

Approval of the Secretary under this subsection shall be conditioned on the utility involved updating on an annual basis the in-

formation contained in such plan to the extent provided under rules prescribed by the Secretary.

[(c) PLAN REVISION.—A plan under subsection (b) may be revised but only if the Secretary, by order, approves such revision.

[(d) EXTENSION FOR EMERGENCY OR PEAKLOAD PURPOSES.—(1) For purposes of subsection (b)(3)(B), the Secretary may extend the date specified therein for not more than 5 years with respect to the use of natural gas by any powerplant if it is demonstrated that such use of natural gas is to be—

[(A) for emergency purposes consistent with section 312(e), or

[(B) for peakload purposes, consistent with section 312(f).

[(2) The Secretary may exempt from the requirements of subsection (b)(4) such quantities of natural gas as would otherwise exceed such requirement if it is demonstrated that such natural gas is used solely for emergency or peakload purposes described in paragraph (1)(A) or (B).

[(e) DETERMINATION OF BASE PERIOD USAGE.—(1) For purposes of subsection (b)(4)(A), an electric utility's base period usage of natural gas shall be the sum of—

[(A) the quantities of natural gas used in calendar year 1976 by powerplants which are owned or operated by such utility and which were placed in service on or before January 1, 1976; plus

[(B) one-half of the quantities used during the first 24 calendar-months after being placed in service by powerplants which are owned or operated by such utility and which were placed in service after January 1, 1976, and before the effective date of this Act.

[(2) The Secretary may allow for the substitution of a higher percentage for the 20 percent specified in subparagraph (A) of subsection (b)(4) if he determines that the utility has demonstrated that such higher percentage is necessary—

[(A) because of delays which occurred, despite diligent good faith efforts, in the construction of powerplants which will use a primary energy source other than natural gas, or

[(B) because it will not be feasible for such utility to comply with the requirements of such subsection (b)(4) in the absence of such higher percentage without impairing reliability of service.

[(f) DETERMINATION OF MINIMUM PEAKLOAD REQUIREMENT.—For purposes of subsection (b)(4)(B), an electric utility's minimum peakload requirement for any calendar year shall be defined as the total kilowatt hours generated during the calendar year by natural gas on the system of the applicant electric utility company system divided by the aggregate capacity of all the electric powerplants in such system, but not to exceed 1,500 full-load hours per year.,

[(g) APPROVAL OF NATURAL GAS CONTRACTS.—The Secretary shall approve any contract, or contract extension or renewal, for purposes of applying subsection (b)(5)(B) with respect to any plan, if he determines that the electric utility which submitted such plan has demonstrated that the quantities available under such contract, or extension or renewal, do not exceed those which are necessary to meet the requirements of the powerplants under such plan.

The Secretary may not approve any contract, or extension or renewal, which provides for the delivery of such natural gas after December 31, 1999.

[(h) TERMS AND CONDITIONS.—Any approval by the Secretary under subsection (b) shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act.]

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TITLE VII—ADMINISTRATION AND ENFORCEMENT

Subtitle A—Procedures

SEC. 701. ADMINISTRATIVE PROCEDURES.

(a) * * *

(b) NOTICES OF RULES AND ORDERS IMPOSING PROHIBITIONS.—Before the Secretary prescribes any rule or issues any order imposing a prohibition under this Act [(other than under section 402)], he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant [or installation] required to be specifically identified in such rule or order.

[(c) PETITIONS FOR EXEMPTIONS.—(1) Any petition for any exemption from any prohibition under this Act or for any permit under section 405, shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption or permit, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after the date of the enactment of this Act.

[(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant or, where appropriate, major fuel-burning installation which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

[(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption or permit, shall issue a final order granting or denying the petition for such exemption or permit, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

[(4) Any order for the approval of a system compliance plan under section 501, and any petition for such an order, shall be

treated for purposes of this title the same as an order (or petition) for an exemption.]

(d) PUBLIC COMMENT ON PROHIBITIONS AND EXEMPTIONS—(1) In the case of any proposed rule or order by the Secretary imposing a prohibition [or any petition for any order granting an exemption (or permit)] under this Act [other than under section 402], any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order [or in the consideration of such petition], and

* * * * * * *

(f) ENVIRONMENTAL PROTECTION AGENCY COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section [402 or] 404), [or a petition for an exemption (or permit) under this Act (other than under section 402 or 404,] shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

[(g) FEDERAL TRADE COMMISSION COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404) with respect to a major fuel-burning installation or a boiler subject to section 401 or a petition by such installation or boiler for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).]

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SEC. 702. JUDICIAL REVIEW.

(a) PUBLICATION AND DELAY OF PROHIBITION [OR EXEMPTION] TO ALLOW FOR REVIEW.—Any final rule or order prescribed by the Secretary imposing a prohibition [or granting an exemption (or permit)] under this Act shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

[(b) PUBLICATION OF DENIAL OF EXEMPTION OR PERMIT.—Any final order issued by the Secretary denying any petition for an exemption or a permit under this Act shall be published in the Federal Register, together with the reasons for such action.]

(c) JUDICIAL REVIEW.—(1) Any person aggrieved by any final rule or order referred to in subsection (a) or in section 404[, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b),] may at any time before the 60th day after the date such rule *or* order [, or denial] is published under subsection (a) [or (b),] file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review [the rule, order, or denial] *the rule or order* in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule or order [(or denial thereof)] may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule[, order, or denial] *or order* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

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Subtitle B—Information and Reporting

SEC. 711. INFORMATION.

(a) AUTHORITY OF SECRETARY.—For purposes of carrying out his responsibilities under this Act, the Secretary may require, under the authority of this Act or any other authority administered by him, any person owning, operating or controlling any electric powerplant [or major fuel-burning installation], or any other person otherwise subject to this Act to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this Act and insure compliance with the provisions of this Act, and any rule or order thereunder. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.

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Subtitle C—Enforcement

SEC. 721. NOTICE OF VIOLATION; OTHER GENERAL PROVISIONS.

(a) * * *

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[(c) LIABILITY FOR CERTAIN PEAKLOAD OPERATION.—No person shall be subject to any penalty under subtitle with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplant within the same system as such powerplant—

[(1) were unavailable for service—

[(A) due to unit or system outages; or

[(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

[(2) have not been operated other than to meet peakload demand.]

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SEC. 722. CRIMINAL PENALTIES.

Any person who willfully violates any provision of this Act [(other than section 402)], or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

SEC. 723. CIVIL PENALTIES.

(a) GENERAL CIVIL PENALTY.—Any person who violates any provision of this Act [(other than section 402)], or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

[(b) CIVIL PENALTIES FOR OPERATION OR USE OF FUELS IN EXCESS OF EXEMPTION.—(1) In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

[(2) Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.

[(c) PENALTIES FOR VIOLATION OF SECTION 402.—(1) Any person who violates any prohibition under subsection (b)(1) of section 402 with respect to providing of natural gas service to any person for use in outdoor lighting shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 for each outdoor lighting fixture involved.

[(2) Any industrial user who violates prohibition under subsection (b)(2) of section 402 shall be subject to a civil penalty, which

shall be assessed by the Secretary and which shall not exceed $500 per day violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed $5,000 per outdoor lighting fixture involved.

[(3) The penalties under this subsection shall only apply in the case of a violation by an person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 402.]

Subtitle D—Preservation of Contractual Rights

SEC. 731. PRESERVATION OF CONTRACTUAL INTEREST.

(a) RIGHT TO TRANSFER CONTRACTUAL INTERESTS.—(1) If any person receives natural gas, the use of which is prohibited by the provisions of [Title II or] title III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractural interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

* * * * * * *

(e) DEFINITIONS.—For purposes of this section—

(1) The term "just compensation", when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractural interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant [or major fuel-burning installation], exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant [or major fuel-burning installation] which assets were directly as-

sociated with the use of natural gas and are not usable in connection with the use of such other fuel.

* * * * * * *

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under [title II or] title III of this Act or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

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Subtitle E—Studies

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SEC. 745. EMISSIONS MONITORING.

(a) MONITORING PROGRAM.—The Administrator of the Environmental Protection Agency shall conduct, on a continuing basis, a program of monitoring, to the greatest extent possible and in accordance with the applicable authorities and provisions of the Clean Air Act, the emissions [from new and existing electric powerplants and major fuel-burning installations] *from existing electric powerplants* required to use coal or other alternate fuels by reason of this Act or otherwise using coal or other alternate fuels and the effect thereof on the public health, safety, and welfare and the movement of such emissions in the atmosphere and their impact on land and water and other resources and the public health in various regions of the Nation. Such Administrator shall submit an annual report to the Congress on such program. In carrying out his responsibilities under this section, the Administrator of the Environmental Protection Agency shall consult with the other Federal and State agencies concerned with the health effects of such emissions.

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Subtitle G—Coordination with other Provisions of Law

SEC. 761. EFFECT ON ENVIRONMENTAL REQUIREMENTS.

(a) COMPLIANCE WITH APPLICABLE ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 404, nothing in this Act shall be construed as permitted any existing [or new] electric powerplant [or major fuel-burning installation] to delay or avoid compliance with applicable environmental requirements.

(b) LOCAL ENVIRONMENTAL REQUIREMENTS.—In this case of any [new or] existing facility—

(1) which is subject to any prohibition under this Act, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under [section 212(b) or] section 312(b); and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

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SEC. 763. ENVIRONMENTAL IMPACT STATEMENTS UNDER NEPA.

The following actions are not deemed to be major Federal actions for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969:

(1) the grant or denial of any temporary exemption under this Act for any electric powerplant [or major fuel-burning installation];

(2) the grant or denial of any permanent exemption under this Act for any existing electric powerplant [or major fuel-burning installation], other than an exemption—

(A) under section 312(c), relating to cogeneration;

[(B) under section 312(l), relating to scheduled equipment outages;]

(C) under section 312(b), relating to certain State or local requirements;

(D) under section 312(g), relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this Act for any powerplant or major fuel-burning installation for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 102 of the National Environmental Policy Act of 1969.

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TITLE VIII—MISCELLANEOUS PROVISIONS

[SEC. 801. COAL RESERVES DISCLOSURE.

[(a) DISCLOSURE.—Within 2 years after the effective date of this Act, and annually thereafter, the Secretary shall require the disclosure, pursuant to section 11 of the Energy Supply and Environmental Coordination Act of 1974, of the extent, characteristics, and productive capacity of coal reserves, or interest therein, within the United States held by any person or governmental entity, as necessary, and shall publish a summary of such information.

[(b) EXEMPTION FOR SMALL RESERVES.—The Secretary may exempt small reserves from the requirements of this section if the Secretary finds that the imposition of the requirements of this section would impose an unreasonable economic burden on such person (or entity) or would not be of significant aid to achievement of the purposes of this Act, and publishes such findings in the Federal Register.]

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SUPPLEMENTAL VIEWS ON H.R. 4669, POWERPLANT AND INDUSTRIAL FUEL USE ACT REPEAL

One thing should be made crystal clear from the outset: there is no disagreement over whether the Fuel Use Act should or should not be repealed. Its repeal is in H.R. 2734, the comprehensive natural gas bill introduced on June 12, 1985, by a bipartisan majority of the Fossil and Synthetic Fuels Subcommittee. It is also part of H.R. 2185 sponsored by our colleagues Dan Coats and Jim Slattery. Furthermore, Fuel Use Act repeal is in H.R. 4604, the natural gas bill introduced on behalf of the Reagan Administration this year. In fact, President Reagan has called for its repeal several times.

H.R. 4669 merely rectifies a mistake in national energy policy that should never have been made in the first place. It is heartwarming to see our colleagues on the other side of the aisle acknowledge that Jimmy Carter's energy policy was wrongheaded.

The Fuel Use Act represents the worst of the Chicken Little energy philosophy embraced by the previous Administration: that the sky was falling, that shortages of natural gas were inevitable, and that as a result, the Federal government should regulate the use of fuel in certain key applications. This Act's repeal is long overdue.

It is clear, however, that this bill is only a wimper of a response to the cries for comprehensive natural gas reform we have heard from many quarters. With a soft gas market, characterized by falling prices and ample supplies, some action on price ceilings and access to transportation is both never more compelling for producers and never more beneficial to consumers, be they residential, commercial or industrial.

FERC has acted with Order 436 on voluntary transportation. Although a majority of interstate pipelines have filed settlements to become Order 436 transporters, only two such settlements have been approved finally by FERC.

Order 451 provides partial relief from old gas price ceilings if some high cost contracts are negotiated. Order 451 is being challenged in court. Moreover, it will provide incentives for bringing to market only about one-third of the projected lower cost old gas. And that is perhaps optimistic, compared to full decontrol.

Interested Members embarked on a series of negotiations in recent months to bring comprehensive natural gas legislation to the Full Committee. At the outset it was agreed to drop wellhead pricing from discussions in order to focus on a sound mandatory transportation bill. Members and staff labored for weeks. In the end, we could not get the respective sides together on the other side of the aisle to get even a short transportation bill.

We stand ready, willing and able to work out the details of a truly beneficial natural gas bill at any time. Although we have

some differences on the details, we believe that they can be worked out in an acceptable fashion.

NORMAN F. LENT.
CARLOS J. MOORHEAD.
BILL DANNEMEYER.
BOB WHITTAKER.
DON RITTER.
THOMAS J. BLILEY, JR.
JACK FIELDS.
MICHAEL G. OXLEY.
HOWARD C. NIELSON.
DAN SCHAEFER.
FRED J. ECKERT.

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